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THE MINNESOTA RATE CASES.

As mentioned in our editorial we give a brief history of these cases. The summary was so admirably made in the *New York Times* of June 11 that we publish that together with an editorial from the same newspaper, which we believe our readers will be pleased to see and preserve.

The so-called Minnesota rate cases, on which hinged the validity of legislation also in South Dakota, Nebraska, Iowa, Kansas, Oklahoma, Alabama, North Dakota, Missouri, and Texas, grew out of the craze for reduction in rates that swept over the West and Southwest a few years ago. Many of these rates were nullified by the State courts on the ground that they were so low as to be confiscatory, but the Minnesota cases involved the right of the States to fix rates on portions of interstate routes, whether confiscatory or not. The decision of the Circuit Court, which held that these laws interfered with interstate commerce, was vigorously attacked at the conference of Governors at Spring Lake, N. J., last year, and a committee was appointed to argue the matter before the Supreme Court. Of this committee Judson Harmon, then Governor of Ohio, was made Chairman, the other members being Aldrich of Nebraska and Hadley of Missouri.

The Minnesota cases themselves arose in 1907, when the Railroad Commission reduced freight rates on all the railroads in Minnesota between 20 and 25 per cent. Soon after the Legislature made other reductions on grain, lumber, livestock, and coal. The railroads, protesting that these reductions were confiscatory, were preparing nevertheless to put them into effect, when one or more stockholders of each instituted actions against the companies, the Railroad Commission, and the Attorney Gen-

eral to enjoin the operation of the reduced rates on the ground that they were unreasonable, and on the further ground that they operated as an interference with interstate commerce and were therefore unconstitutional and void. Three typical cases were submitted to the Circuit Court for the District of Minnesota, which decided for the plaintiffs.

The court's opinion, which was written by Judge Sanborn, held that a direct and necessary result of the reduction of rates in Minnesota was to compel the railroads to revise their through rates accordingly, and that this made the action of the State an interference with or regulation of interstate commerce.

When the case was argued in the Supreme Court on appeal the Committee of Governors, appearing as friends of the court, submitted that if the railroads reduced the interstate rates it would not be from any legal compulsion growing out of the State legislation, but as a matter of business policy. While admitting the probable business necessity of this action on the part of the railroads, they argued that this fact could not affect the rights of the States within their own borders.

Judge Sanborn held that the exercise of the State's rights, to regulate intrastate commerce might be enjoined, because of the actual or probable effect it might be shown to have on interstate commerce through the operation, on those engaged therein, of conditions of competition, location of commercial centres and railroad lines, and business necessities. The purely local rates fixed by the State were held unlawful, and enjoined because the court found on account of them carriers would have to change existing interstate rates, so that the State's regulation of its own internal commerce became, in effect, a regulation of interstate commerce.

The reasons given were that on account of the location of cities on the border of Minnesota and adjoining States the railroads would be, or had been, compelled to reduce rates between Minnesota and cities in other States by reason of the competition of the latter with cities of Minnesota. Thus Superior, Wis., on the border of Minnesota, is practically the same distance from St. Paul as Duluth, the two, in fact, constituting one commercial centre. If the rates between St. Paul and Duluth were reduced, it was contended, a reduction of the rates between St. Paul and

Superior would be necessary, and this constituted a direct regulation of interstate commerce. Other examples similar in effect were set forth, and the court said:

The cities in each pair depend upon the same carriers for substantially the same distributing and producing markets, and receive and ship the same kind of articles. Any substantial advance of rates as between the cities composing each pair would seriously damage, if not wholly destroy the commerce of the city given the higher rate, and would be an undue and unjust preference and advantage in fact for its neighboring city. Failure to maintain substantially as low rates between Superior and points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the company's property in Superior.

The court held that the necessities of competition compelled the railroad so to reduce its rates or "to suffer a substantial loss in revenue from its interstate business." It had the choice, the court said, "of submitting to that loss or suffering substantial destruction of its interstate commerce in articles covered by the order between these localities."

Another disastrous effect which it was held would follow from a failure of the railroads so to adjust these rates was stated as follows:

Such lower basis of rates within Minnesota than between Minnesota and its neighboring States would result in the promotion of the growth and prosperity of localities in Minnesota at the expense of localities in neighboring States and the enhancement of the value of property in Minnesota and the serious impairment of the value of property of all business men, as well as that of the carriers themselves, in the neighboring States.

The fact that the rates in question related only to internal commerce was thus answered:

This contention, however, cannot be sustained, because, as has been demonstrated in the earlier part of this opinion, if, by their natural or necessary operation, these acts and orders have the effect substantially to burden interstate commerce, they fall un-

der the ban of the Constitution and are beyond the power of the State.

The Governors, in their brief, argued that if the railroads are driven by business necessity to make through rates in conformity with local rates, and if such rates are reasonable, the result is a legitimate one. They said:

The test cannot be whether the effect of fixing the local rates may or will be to lead the railroads to lower their interstate rates, but whether the local rates are fair and reasonable, for if they are so and the sum of them is so much lower than the interstate rates as to lead shippers to take the trouble and risk of rebilling or reshipping at State lines, this is a perfectly lawful condition, the advantage of which the public is entitled to enjoy. The railroads cannot invoke the commerce clause of the Federal Constitution to shield themselves against fair and reasonable rates fixed by a State for its own internal business. The effect of these on interstate rates is not only incidental and indirect, but also legitimate under the dual form of government through which we enjoy happiness and prosperity beyond compare.

The cases before the court involve no conflict between State and Federal authority. The controversy is between the State and the railroads. No one contends that Congress could exercise any control over the purely internal commerce of the States.

The effect of the decision, the Governors also contended, was not to take power from the States and leave it with Congress, but to take power from the States and leave the railroads free to charge whatever rates they pleased in their traffic within the States.

A day's study of the seventy-two printed pages of Justice Hughes's Supreme Court opinion in the Minnesota rate case has led to the belief in certain quarters that the precise scope of the power over intrastate rates reserved to the States will not be known until the court hands down its decision in the Shreveport case. The Supreme Court today advanced hearings on this case, setting Oct. 14 for the purpose, and, without announcing any additional decisions in the State rate cases, adjourned until Monday, June 16, which will be its final decision day for this term.

Doubts as to the limits within which yesterday's decision ap-

plied arose first from the phrase in the opinion declaring, in regard to the indirect effect upon interstate commerce of intrastate regulation, that "the State power nevertheless continues until Congress does act and by its valid interposition limits the exercise of the local authority." That was at first taken to be almost an invitation to Congress to provide new legislation supplanting the orders of State commissions and the provisions of State statutes.

It was suggested, however, in a Washington dispatch to the *New York Times* last night that a paragraph of the decision seemed to mean not so much that Federal laws were lacking for this purpose as that the law creating the Interstate Commerce Commission had not been invoked in the Minnesota cases. The decision refrains from stating that the indirect effects upon interstate commerce of intrastate regulation are subject to Federal control. But it does state that, if the Federal control exists, it will have to be exercised through the "body created for that purpose"—the Interstate Commerce Commission.

That body alone, under the "system of regulation defined" by the Hepburn act, said the court, could declare that "discrimination in fact" against points outside the State resulted from the State's exercise of its admitted powers within its borders. As the Interstate Commerce Commission had not investigated the alleged discrimination arising from the Minnesota regulations, there was no competent testimony for the court to review, and the State law was sustained on general constitutional grounds.

What the court said on the subject yesterday, in reference to the contention that the indirect effect of local legislation upon interstate commerce lay wholly in the hands of Congress, follows:

If it be assumed that the statute should be so construed, and it is not necessary now to decide the point, it would inevitably follow that the controlling principle governing the enforcement of the act should be applied to such cases as might thereby be brought within its purview; and the question whether the carrier in such a case was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission, and not for the courts.

The dominating purpose of the statute was to secure con-

formity to the prescribed standards through the examination and appreciation of the complex acts of transportation by the body created for that purpose, and, as this court has repeatedly held, it would be destructive of the system of regulation defined by the statute if the court, without the preliminary action of the commission, were to undertake to pass upon the administrative questions which the statute has primarily confided to it.

In the present case there has been no finding by the interstate Commerce Commission of unjust discrimination violative of the act, and no action of that body is before us for review.

The interesting thing about the Shreveport case is that the Interstate Commerce Commission has acted and has set aside rates fixed by the laws of the State of Texas. In making that order the Commission expressly declared that rates fixed by State law within the limits of Texas constituted a discrimination against points outside the State, and several railroads were directed to disregard the low rates imposed on traffic within the Texas limits. The Commerce Court has sustained the order of the Interstate Commerce Commission, and the case comes to the Supreme Court, strangely enough, on the appeal of the railroads.

The fight against the Texas rates was begun by the Louisiana Railroad Commission before the Interstate Commerce Commission. The Louisiana authorities set forth that the low rates forced upon the railroads on intrastate traffic within the State of Texas gave a great advantage to shippers from Houston and Dallas, in Texas, to other points in Texas, as against shippers from Shreveport, La., to Texas points about equally distant between the Texas and the Louisiana shipping centres.

Seven railroads are involved in the appeal against the order which the Interstate Commerce Commission granted at the request of the Louisiana authorities. The brief filed jointly by the Texas & Pacific, the Missouri, Kansas & Texas, and the St. Louis Southwestern Railway sets forth that the discrimination charged against them is not voluntary on their part; that their rates were fixed in obedience to the laws of Texas, and that any departure from those rates would subject the roads and their officers to heavy penalties. Those arguments failed to convince the Commerce Court, and they will now be weighed by the highest court in the land.

If the view referred to in the quotation from yesterday's decision is taken in regard to the Shreveport case, the authority of the States even over intrastate rates would be limited to those lines having no relation whatever to roads that pass the borders of the State. The interrelation of traffic, it is believed, is now so close that such lines would be found to be few in number. The court repeatedly has held that the Interstate Commerce Commission is the sole judge of facts within its jurisdiction, so there would be no review of the commission's findings that discrimination results from the application of the Texas rates. It would be simply a question whether that discrimination, as an indirect effect of the State's exercise of sovereignty, was permissible or whether it infringed upon the Federal jurisdiction.

There are now before the Supreme Court awaiting decision twenty-four cases analogous to the Minnesota cases decided yesterday. Cross appeals almost double this number. Unlike the Shreveport case, the Interstate Commerce Commission never has had anything to do with them. As a result it is thought that, so far as the general legal principles are involved, they will be decided according to yesterday's finding. Nineteen of them originate in Missouri, two in Oregon, one in West Virginia, and two in Arkansas.

On the question of confiscation each of these cases will be settled according to its individual merits, though yesterday's decision throws much light on the severe requirements of the Supreme Court as to proof of confiscation. The Missouri cases involve a two-cent law that probably will be sustained as far as its bearing on interstate commerce is concerned, but it may be that, as in the case of the Minneapolis & St. Louis Railroad yesterday, the rate will be found confiscatory in its effect on certain unprofitable roads. Similar findings are expected in regard to the two cases from Arkansas. The law of Oregon and Kentucky, it is thought, will be sustained in their entirety, as the attacks on them are directed almost exclusively along constitutional lines.